2004 - Environmental Affairs House Temporary Rule (Salmon)

ADMINISTRATIVE RULES REVIEW

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Legislative Session 2004

2004 - Environmental Affairs House Temporary Rule (Salmon)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0303

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule was effective October 24, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before December 17, 2003. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to correct errors found in Section 210. Those areas that have been identified for correction include cross-reference citations, the domestic supply use criteria for chlordane in Subsection 210.01, and the conversion factor for cadmium in Subsection 210.02. In addition, this rulemaking will include the addition of omitted dissolved total conversion factors for chromium (VI) and mercury in Subsection 210.02.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the spring of 2004 for adoption of a pending rule. The rule is expected to be final upon the conclusion of the 2005 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law or regulations.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to protect public health.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Don Essig at (208)373-0502 or dessig@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 31, 2003.

DATED this 24th day of October, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0303

210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.

01. Criteria For Toxic Substances. The criteria of Section 210 apply to surface waters of the state as follows. (5-3-03)

a. Columns B1, B2, and C2 of the following table apply to waters designated for aquatic life use. (5-3-03)

b. Column C2 of the following table applies to waters designated for recreation use. (5-3-03)

c. Column C1 of the following table applies to waters designated for domestic water supply use.

A			B Aquatic life		Human health for consumption of:	
(Number) Compound		[a] CAS Number	[b] CMC (µg/L) B1	[b] CCC (µg/L) B2	Water & organisms (µg/L) C1	Organisms only (µg/L) C2
1	Antimony	7440360			14 l	4300 l
2	Arsenic	7440382	360 e	190 e	50 d	50 d
3	Beryllium	7440417			h	h
4	Cadmium	7440439	3.7 i	1.0 i	h	h
5a	Chromium III	16065831	550 i	180 i	h	h
5b	Chromium VI	18540299	15 e	10 e	h	h
6	Copper	7440508	17 i	11 i		
7	Lead	7439921	65 i	2.5 i	h	h
8	Mercury	7439976	2.1 e	0.012 fg	0.14	0.15
9	Nickel	7440020	1400 i	160 i	610 c	4600 c
10	Selenium	7782492	18	5 f	h	h
11	Silver	7440224	3.4 i			
12	Thallium	7440280			1.7 c	6.3 c
13	Zinc	7440666	114 i	105 i		
14	Cyanide	57125	22 j	5.2 j	700 c	220000 c
15	Asbestos	1332214			7,000,000 fibers/L k	
16	2, 3, 7, 8-TCDD Dioxin	1746016			0.000000013 l	0.000000014 l
17	Acrolein	107028			320	780
18	Acrylonitrile	107131			0.059 cl	0.66 cl

A			B Aquatic life		Human health for consumption of:			
(Number) Compound		[a] CAS Number	[b] CMC (µg/L) B1	[b] CCC (µg/L) B2	Water & organisms (µg/L) C1		Organisms only (µg/L) C2	
19	Benzene	71432			1.2	cl	71	cl
20	Bromoform	75252			4.3	cl	360	cl
21	Carbon Tetrachloride	56235			0.25	cl	4.4	cl
22	Chlorobenzene	108907			680	c	21000	c
23	Chlorodibromomethane	124481			0.41	cl	34	cl
24	Chloroethane	75003						
25	2-Chloroethylvinyl Ether	110758						
26	Chloroform	67663			5.7	cl	470	cl
27	Dichlorobromomethane	75274			0.27	cl	22	cl
28	1,1-Dichloroethane	75343						
29	1,2-Dichloroethane	107062			0.38	cl	99	cl
30	1,1-Dichloroethylene	75354			0.057	cl	3.2	cl
31	1,2-Dichloropropane	78875						
32	1,3-Dichloropropylene	542756			10	c	1700	c
33	Ethylbenzene	100414			3100	c	29000	c
34	Methyl Bromide	74839			48	c	4000	c
35	Methyl Chloride	74873				h		h
36	Methylene Chloride	75092			4.7	cl	1600	cl
37	1,1,2,2-Tetrachloroethane	79345			0.17	cl	11	cl
38	Tetrachloroethylene	127184			0.8	l	8.85	l
39	Toluene	108883			6800	c	200000	c
40	1,2-Trans-Dichloroethylene	156605						
41	1,1,1-Trichloroethane	71556				h		h
42	1,1,2-Trichloroethane	79005			0.6	cl	42	cl
43	Trichloroethylene	79016			2.7	l	81	l
44	Vinyl Chloride	75014			2	l	525	l
45	2-Chlorophenol	95578						
46	2,4-Dichlorophenol	120832			93	c	790	c
47	2,4-Dimethylphenol	105679						

A			B Aquatic life		Human health for consumption of:			
(Number) Compound		[a] CAS Number	[b] CMC (µg/L) B1		[b] CCC (µg/L) B2		Water & organisms (µg/L) C1		Organisms only (µg/L) C2	
48	2-Methyl-4,6-Dinitrophenol	534521					13.4		765	
49	2,4-Dinitrophenol	51285					70	c	14000	c
50	2-Nitrophenol	88755								
51	4-Nitrophenol	100027								
52	3-Methyl-4-Chlorophenol	59507								
53	Pentachlorophenol	87865	20	m	13	m	0.28	cl	8.2	cl
54	Phenol	108952					21000	c	4600000	c
55	2,4,6-Trichlorophenol	88062					2.1	cl	6.5	cl
56	Acenaphthene	83329								
57	Acenaphthylene	208968								
58	Anthracene	120127					9600	c	110000	c
59	Benzidine	92875					0.00012	cl	0.00054	cl
60	Benzo(a)Anthracene	56553					0.0028	l	0.031	l
61	Benzo(a)Pyrene	50328					0.0028	l	0.031	l
62	Benzo(b)Fluoranthene	205992					0.0028	l	0.031	l
63	Benzo(ghi)Perylene	191242								
64	Benzo(k)Fluoranthene	207089					0.0028	l	0.031	l
65	Bis(2-Chloroethoxy) Methane	111911								
66	Bis(2-Chloroethyl)Ether	111444					0.031	cl	1.4	cl
67	Bis(2-Chloroisopropyl) Ether	108601					1400	c	170000	c
68	Bis(2-Ethylhexyl) Phthalate	117817					1.8	cl	5.9	cl
69	4-Bromophenyl Phenyl Ether	101553								
70	Butylbenzyl Phthalate	85687								
71	2-Chloronaphthalene	91587								
72	4-Chlorophenyl Phenyl Ether	7005723								

A			B Aquatic life		Human health for consumption of:			
(Number) Compound		[a] CAS Number	[b] CMC (µg/L) B1	[b] CCC (µg/L) B2	Water & organisms (µg/L) C1		Organisms only (µg/L) C2	
73	Chrysene	218019			0.0028	l	0.031	l
74	Dibenzoa,hAnthracene	53703			0.0028	l	0.031	l
75	1,2-Dichlorobenzene	95501			2700	c	17000	c
76	1,3-Dichlorobenzene	541731			400		2600	
77	1,4-Dichlorobenzene	106467			400		2600	
78	3,3'-Dichlorobenzidine	91941			0.04	cl	0.077	cl
79	Diethyl Phthalate	84662			23000	c	120000	c
80	Dimethyl Phthalate	131113			313000		2900000	
81	Di-n-Butyl Phthalate	84742			2700	c	12000	c
82	2,4-Dinitrotoluene	121142			0.11	l	9.1	l
83	2,6-Dinitrotoluene	606202						
84	Di-n-Octyl Phthalate	117840						
85	1,2-Diphenylhydrazine	122667			0.040	cl	0.54	cl
86	Fluoranthene	206440			300	c	370	c
87	Fluorene	86737			1300	c	14000	c
88	Hexachlorobenzene	118741			0.00075	cl	0.00077	cl
89	Hexachlorobutadiene	87683			0.44	cl	50	cl
90	Hexachloro-cyclopentadiene	77474			240	c	17000	c
91	Hexachloroethane	67721			1.9	cl	8.9	cl
92	Ideno (1,2,3-cd) Pyrene	193395			0.0028	l	0.031	l
93	Isophorone	78591			8.4	cl	600	cl
94	Naphthalene	91203						
95	Nitrobenzene	98953			17	c	1900	c
96	N-Nitrosodimethylamine	62759			0.00069	cl	8.1	cl
97	N-Nitrosodi-n-Propylamine	621647						
98	N-Nitrosodiphenylamine	86306			5.0	cl	16	cl
99	Phenanthrene	85018						
100	Pyrene	129000			960	c	11000	c

A			B Aquatic life		Human health for consumption of:			
(Number) Compound		[a] CAS Number	[b] CMC (µg/L) B1	[b] CCC (µg/L) B2	Water & organisms (µg/L) C1		Organisms only (µg/L) C2	
101	1,2,4-Trichlorobenzene	120821						
102	Aldrin	309002	3		0.00013	cl	0.00014	cl
103	alpha-BHC	319846			0.0039	cl	0.013	cl
104	beta-BHC	319857			0.014	cl	0.046	cl
105	gamma-BHC (Lindane)	58899	2	0.08	0.019	l	0.063	l
106	delta-BHC	319868						
107	Chlordane	57749	2.4	0.0043	0.00057	cl	0.00059	cl
108	4,4'-DDT	50293	1.1	0.001	0.00059	cl	0.00059	cl
109	4,4'-DDE	72559			0.00059	cl	0.00059	cl
110	4,4'-DDD	72548			0.00083	cl	0.00084	cl
111	Dieldrin	60571	2.5	0.0019	0.00014	cl	0.00014	cl
112	alpha-Endosulfan	959988	0.22	0.056	0.93	c	2.0	c
113	beta-Endosulfan	33213659	0.22	0.056	0.93	c	2.0	c
114	Endosulfan Sulfate	1031078			0.93	c	2.0	c
115	Endrin	72208	0.18	0.0023	0.76	c	0.81	c
116	Endrin Aldehyde	7421934			0.76	c	0.81	c
117	Heptachlor	76448	0.52	0.0038	0.00021	cl	0.00021	cl
118	Heptachlor Epoxide	1024573	0.52	0.0038	0.00010	cl	0.00011	cl
119	Polychlorinated Biphenyls PCBs:	n		0.014 n	0.00017	o	0.00017	o
120	Toxaphene	8001352	0.73	0.0002	0.00073	cl	0.00075	cl
121	Chlorine		19 k	11 k				

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	[a] CAS Number	[b] CMC (µg/L) B1	[b] CCC (µg/L) B2	Water & organisms (µg/L) C1	Organisms only (µg/L) C2
Note to table: Table values are from 57 FR 60910, December 22, 1992 (National Toxics Rule) except as noted. **Table Footnotes**					
a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.					
b. See Definitions, Section 003 of these rules.					
c. This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of December 22, 1992. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.					
d. Inorganic form only. The criterion for arsenic is the MCL in effect as of April 5, 2000.					
e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.b.ii. CMC = column B1 value X WER. CCC = column B2 value X WER.					
f. Criterion expressed as total recoverable (unfiltered) concentrations.					
g. If the CCC for total mercury is exceeded more than once in a three (3) year period in ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (one (1.0) mg/kg). If the FDA action level is exceeded, the Director must notify the EPA regional administrator, initiate a review and as appropriate, revision of its mercury criterion in these water quality standards, and take other appropriate action such as the issuance of fish consumption advisory for the affected area.					
h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.					
i. Aquatic life criteria for these metals are expressed as a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.b.ii and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).					
j. Criteria are expressed as weak acid dissociable (WAD) cyanide.					
k. Total chlorine residual concentrations.					
l. This criterion is based on carcinogenicity of 10^{-6} risk.					
m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH)-4.830) CCC = exp(1.005(pH)-5.290)					
n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.					
o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).					

~~(5-3-03)~~(10-24-03)T

02. Factors For Calculating Hardness Dependent Metals Criteria. Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

a. CMC=WER exp{mA[ln(hardness)]+bA} X Acute Conversion Factor. (5-3-03)

b. CCC=WER exp{mc[ln(hardness)]+bc} X Chronic Conversion Factor.

Metal	m_A	b_A	m_c	b_c	[a]Acute Conversion Factor	[a]Chronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	1.12~~2~~8	-3.828	0.7852	-3.490	0.944	0.909
Chromium (III)	0.819	3.688	0.8190	1.561	0.316	0.860
Chromium (VI)	b	b	b	b	0.982	0.962
Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Mercury	b	b	b	b	0.85	b
Nickel	0.846	3.3612	0.8460	1.1645	0.998	0.997
Selenium	b	b	b	b	0.922	b
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.8604	0.8473	0.7614	0.978	0.986

Note to table: The term “exp” represents the base e exponential function.

Footnotes to table:

a. Conversion factors (CF) are from “Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth.” The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table.

Cadmium
Acute: CF=1.136672–[(ln hardness)(0.041838)]
Chronic: CF=1.101672–[(ln hardness)(0.041838)]
Lead (Acute and Chronic): CF=1.46203–[(ln hardness)(0.145712)

b. Not applicable

c. No chronic criteria are available for silver.

~~(5-3-03)~~(10-24-03)T

03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications including mixing zones, and low flow design discharge conditions below which numeric standards can be exceeded in flowing waters. (5-3-03)

a. For all waters for which the Department has determined mixing zones to be applicable, the criteria apply at the appropriate locations specified within or at the boundary of the mixing zone of the mixing zones; otherwise the criteria apply through the waterbody including at the end of any discharge pipe, canal or other discharge point. (5-3-03)

b. Low flow design discharge conditions. Numeric chemical standards can only be exceeded in perennial streams due to permitted discharges when flows are less than the following values:

Aquatic Life		Human Health	
CMC ("acute" criteria)	1Q10 or 1B3	Non-carcinogens	30Q5
CCC ("chronic" criteria)	7Q10 or 4B3	Carcinogens	Harmonic mean flow

(5-3-03)

i. Where "1Q10" is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where "1B3" is biologically based and indicates an allowable exceedence of once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

iii. Where "7Q10" is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where "4B3" is biologically based and indicates an allowable exceedence for four (4) consecutive days once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

v. Where "30Q5" is the lowest average thirty (30) consecutive day low flow with an average recurrence frequency of once in five (5) years determined hydrologically; and (5-3-03)

vi. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of metals criteria. (5-3-03)

i. For purposes of calculating aquatic life criteria for metals from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (5-3-03)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes e. and i. in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of ~~*Subsection 210.03.c.iii.*~~ calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC5O) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC5O) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of ~~*Subsection 210.03.c.iii.*~~ calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current

standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.~~b~~c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. ~~(5-3-03)~~(10-24-03)T

04. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (5-3-03)

a. "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993. (4-5-00)

b. "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993. (4-5-00)

c. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993. (4-5-00)

d. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994. (4-5-00)

05. Development of Toxic Substance Criteria. (4-5-00)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

i. Site-specific criteria developed pursuant to Section 275; (4-5-00)

ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)

iii. The most recent recommended criteria defined in EPA's Aquatic Toxicity Information Retrieval (ACQUIRE) database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (4-5-00)

iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)

b. Human Health Criteria. (4-5-00)

i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department from the most recent recommended criteria defined in EPA's Integrated Risk Information System (IRIS). When using EPA recommended criteria to derive water quality criteria to protect human health, a fish consumption rate of six point five (6.5) grams/day, a water ingestion rate of two (2) liters/day and a cancer risk level of 106 shall be utilized. (4-5-00)

2004 - Environmental Affairs House Temporary Rule (Salmon)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule was effective November 14, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before January 23, 2004. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to update the Idaho Water Quality Standards to be consistent with the Snake River Hell's Canyon TMDL temperature and regional temperature criteria guidance. This temporary/proposed rule revises the salmonid spawning and incubation temperature criteria to 13°C as a maximum weekly maximum temperature.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in 2004 for adoption of a pending rule. The rule is expected to be final upon the conclusion of the 2005 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law or regulations.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit and is necessary to comply with federal deadlines.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the temporary rulemaking schedule did not allow for the timing of it.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Don Essig at (208)373-0502 or dessig@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before February 6, 2004.

DATED this 14th day of November, 2003.

Paula J. Gradwohl
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0401

286. SNAKE RIVER, SUBSECTION 130.01, HUC 17060101, UNIT S1, S2, AND S3; SITE-SPECIFIC CRITERIA FOR WATER TEMPERATURE.
A maximum weekly maximum temperature of thirteen degrees C (13C) to protect fall chinook spawning and incubation applies from October 23rd through April 15th in the Snake River from Hell's Canyon Dam to the Salmon River. (11-14-03)T

28~~6~~7. -- 299. (RESERVED).

Subject Index

2004 - Environmental Affairs House Temporary Rule (Salmon)